IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.MC.No. 4854 of 2003()

CC.142/1997 of ADDL.CHIEF JUDICIAL MAGISTRATE (E O),ERNAKULAM

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PETITIONER(S):

P.P.POULOSE, MANAGING DIRECTOR,
M/S.PAN INDIA ENGINEERING & CONSTRUCTION COMPANY
(P) LTD., REVIEW BUILDINGS, NALANCHIRA P.O.,
TRIVANDRUM 15.

BY ADV. SRI.K.BABU THOMAS

RESPONDENT(S):

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1. M/S.BHARATH EARTH MOVERS LTD.,
23/1, 4TH MAIN S.R.NAGAR,
BANGALORE 500 027, REP. BY ITS MANAGING DIRECTOR.

2.THE DISTRICT MANAGER, M/S.BHARATH EARTH MOVERS LTD., CHITTOOR ROAD, COCHIN – 16.

3. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

SRI.A.M.SHAFFIQUE FOR R1
SMT.PRIYA MAHESH FOR R1
GOVERNMENT PLEADER FOR R3
PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.M.C.NO.4854 OF 2003,

Dated this the 12th day of December, 2007

O R D E R

A complaint is filed against petitioner, alleging offence under Section 138 of the Negotiable Instruments Act. As per the allegations made in the complaint, the petitioner, incurred financial liability because of purchase of goods from the complainant and for the discharge of the debt, issued a cheque drawn on the Bank of Baroda. The cheque, on presentation, was returned with the endorsement, 'insufficient funds'. A notice was issued to the petitioner. Though it was acknowledged and received by the accused, no reply was sent. Amount was also not paid within the stipulated time and hence the complaint was filed.

2. Learned counsel for the petitioner vehemently contended that the petitioner has no personal liability to be discharged in favour of the respondent-complainant. He has not, in his personal capacity, purchased any article from the respondent-complainant. He has also not issued any cheque on an account maintained by him with any banker and the cheque referred to in the complaint does not belong to the accused.

3. Learned counsel for respondent- complainant argued that petitioner is the Managing Director of a Company and liability of the

company arose on account of purchase of goods from the complainant. It is for the discharge of such liability that the cheque involved in this case was drawn by none other than the Managing Director of the said company. Therefore, petitioner cannot wriggle out of his criminal liability, since he is answerable for the liability of the company, which actually committed the offence. Petitioner ought to have sent a reply to the notice or see that the amount is paid. But nothing was done. Hence the petitioner is liable for offence under Section 138 of the Negotiable Instruments Act in the light of the decision reported in **Anil Hada v. Indian Acrylic Ltd**. (2000(1) KLT 141), it is strongly argued.

4.It is also submitted by learned counsel for respondent that this complaint was filed as early as in 1994 and the trial has been proceeded with. Evidence was adduced and in the year 2003, this petition is filed under Section 482 of the Code of Criminal Procedure to quash the complaint. The petitioner filed this petition only at the fag end of the trial and this sort of petition may not be entertained, it is contended.

5. On hearing both sides, I find that I need not go into the merits of the rival contentions raised in this case, in the peculiar

circumstances of the case. It is an admitted fact that the complaint was filed in 1994 and for about 9 years, the case was pending before trial court and evidence was also recorded. Sufficient time of the court was spent for the trial of this case and it is only in 2003, at a very belated stage that the petitioner has approached this court to quash the complaint. In my view, Section 482 Cr.P.C. shall be invoked only in exceptional cases and power under the said section has to be exercised only sparingly. On the facts and circumstances of the case, I do not find that petitioner deserves intervention under Section 482 of the Code, at this belated stage. Moreover, certain disputed questions of facts arise in this case but such questions cannot be resolved in this proceedings.

6. However, it is made clear that all the rival contentions raised in this case can be raised before the trial court itself and nothing stated in this order shall prejudice the parties.

This petition is dismissed.

K.HEMA, JUDGE

vgs.